

JFD, INC.

IBLA 80-43

Decided August 25, 1980

Appeal from a decision of the Director, Geological Survey, affirming the denial by the Oil and Gas Supervisor of an allowance for transporting royalty oil. GS 143 O&G.

Remanded.

1. Oil and Gas Leases: Contracts for Sale of Royalty Oil or Gas--Oil and Gas Leases: Royalties--Outer Continental Shelf Lands Act: Oil and Gas Leases.

When the point of delivery for OCS royalty oil produced under a section 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is on or immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

APPEARANCES: Patrick J. Keeley, Esq., Michael J. Manning, Esq., Washington, D.C., for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

JFD, Inc., appeals from a decision of the Director, Geological Survey (GS), dated September 12, 1979, affirming the denial by the Oil and Gas Supervisor of a transportation allowance claimed by appellant. The allowance sought by appellant would compensate it for the transportation of royalty oil, taken in kind by GS, from the Grand Isle Block 81 platform to the South Timbalier Block 63 platform, Gulf of Mexico area.

JFD, Inc., is the successor in interest to Oil and Gas Futures, Inc. (OGFI), in offshore leases OCS-G 1583, OCS-G 1986, and OCS-G 1987. These leases were issued pursuant to section 8, Outer

Continental Shelf Lands Act, as amended, 43 U.S.C. § 1337 (Supp. II 1978). Under the terms of these leases, the Government has the option of taking its one-sixth royalty either in cash or in kind. On two occasions here relevant, the Government elected to take its royalty share in kind, i.e., in production. By the terms of section 3(a)(3) of leases OCS-G 1986 and OCS-G 1987, the Government is to pay the costs of transporting royalty oil, taken in production, in certain instances:

When paid in production, such royalties shall be delivered at pipeline connections or in tanks provided by the lessee. Such deliveries shall be made at reasonable times and intervals and, at the lessor's option, shall be effected either (i) on or immediately adjacent to the leased area, without cost to the lessor, or, (ii) at a more convenient point closer to shore or on shore, in which event the lessee shall be entitled to reimbursement for the reasonable cost of transporting the royalty substance to such delivery point. [Emphasis supplied.]

Regulations found at 30 CFR 225a.4 are consistent with the above lease terms:

When the point of delivery for OCS royalty oil produced under a section 8 lease is to be other than on or immediately adjacent to the leased area, the purchaser shall promptly reimburse the lessee or operator for the cost of transporting the oil to the point of delivery. \* \* \* Cost of transportation must be approved by the Supervisor and may be deducted from the value of the oil at the point of delivery in calculating payments to be made to the Government. The Government guarantees payment to the lessee or operator for such cost of transportation.

[1] If the point of delivery for royalty oil, taken in kind from leases OCS-G 1986 and OCS-G 1987, were on or immediately adjacent to the lease area, JFD would not be entitled to reimbursement of its transportation cost in moving the royalty oil from the Grand Isle Block 81 platform to the South Timbalier Block 63 platform. There seems to be no question that the Grand Isle Block 81 platform is on or immediately adjacent to lease areas OCS-G 1986 and OCS-G 1987. The issue for resolution, therefore, becomes whether the point of delivery for the royalty oil was Grand Isle Block 81, as GS maintains, or South Timbalier Block 63, as JFD maintains.

As defined at 30 CFR 225a.2(j), the point of delivery is "the point at which the OCS royalty oil, or the quantity thereof in a commingled stream, is delivered by the lessee to the Government and ownership of the OCS royalty oil is transferred simultaneously from

the Government to the purchaser." 1/ The purchaser involved in the instant appeal is Evangeline Refining Co., Inc. (Evangeline). Royalty oil from leases OCS-G 1986 and OCS-G 1987 was transported from the Grand Isle Block 81 platform through JFD's 19-mile pipeline to Chevron's South Timbalier Block 63 platform and thereafter through Chevron's pipeline to the Pass Fourchon Terminal onshore. As these facts, by themselves, do not establish where the point of delivery was, it is necessary to examine the agreements of the parties.

The transactions leading to the sale of royalty oil to Evangeline began in May of 1976 with a letter from the Oil and Gas Supervisor to OGFI 2/ notifying OGFI of the Supervisor's authorization to execute new agreements for the sale of royalty oil to refiners such as Evangeline. The Supervisor informed OGFI that it could designate the point of delivery for oil from lease OCS-G 1583 pursuant to 30 CFR 225a.2(j)(2). That regulation authorized the lessee of a section 8 lease, issued prior to October 1969, to designate the point of delivery for royalty oil taken in kind by the Government. The letter made no reference to leases OCS-G 1986 or OCS-G 1987, the subjects of the instant appeal. OGFI responded by designating Chevron's South Timbalier Block 63 "A" platform as the point of delivery. 3/

By contract dated July 20, 1976, the United States agreed to sell its royalty oil, taken the kind from leases OCS-G 1583, OCS-G 1986, and OCS-G 1987, to Evangeline. Platform "A," Grand Isle Block 81, was designated as the point of delivery for oil from leases OCS-G 1986 and OCS-G 1987. 4/ This location was on or immediately adjacent to these

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1/ This regulation continues as follows:

"(1) With respect to all leases issued after October 1969, the point of delivery will be a point designated by or acceptable to the Supervisor. The deliveries normally shall be made immediately after the point of measurement of such oil or the commingled stream containing such oil, after separation and treating processes; Provided, however, That if such measurement is at an offshore location and such oil is commingled after such measurement with other untreated oil and is transported to a treating facility for treating and final measurement, the point of delivery may be immediately downstream of the place of final measurement. The point of delivery may be otherwise, and the Supervisor shall determine that any proposed point of delivery is practical for both the lessee and the purchaser, with proper safeguards for the environment.

"(2) With respect to section 8 leases issued prior to October 1969, the point of delivery will be a point designated by the lessee."

2/ Letter of May 18, 1976.

3/ Letter of May 25, 1976, to the Oil and Gas Supervisor, Geological Survey.

4/ Article IV of Contract 14-08-0001-15545 states in part:

"DELIVERY: The GOVERNMENT agrees to deliver without cost to it except for any approved reimbursement made to the lessee or operator

leases. Platform "A," South Timbalier Block 63, was designated as the point of delivery for OCS-G 1583. Because South Timbalier Block 63 was not on or immediately adjacent to lease OCS-G 1583, the contract was amended to permit Evangeline to reduce the price it paid to the United States by 58 cents per barrel, an amount representing the transportation allowance which it was to pass on to JFD. There appears to be no confusion as between the United States and Evangeline as to where the point of delivery was for the various leases. By letter of July 21, 1976, GS notified JFD of its intention to begin taking royalty oil in kind for sale to Evangeline. Deliveries began on August 20, 1976. No one, it appears, informed JFD of the point of delivery.

JFD claims that the point of delivery for the royalty oil at issue was at the South Timbalier Block 63 platform. The correspondence in the file reveals that GS's first written notice to JFD stating that the point of delivery was on or immediately adjacent to the lease, i.e., at Grand Isle Block 63, was on April 19, 1978. 5/ JFD points to correspondence in 1973 6/ between GS and OGFI wherein GS stated that OGFI could apply for a transportation allowance for the delivery of oil from the Grand Isle to South Timbalier platforms. Subsequent correspondence invited OGFI to designate the point of delivery for oil from leases OCS-G 1583, OCS-G 1986, and OCS-G 1987, citing 30 CFR 225a.2(j)(2). 7/

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fn. 4 (continued)

for the cost of transporting the royalty oil to the point of delivery and the PURCHASER agrees to accept said royalty oil at the point of delivery to the GOVERNMENT designated by the lessee, unless other arrangements shall be approved by the Secretary of the Interior \* \* \*." (Underscoring supplied.) While no confusion appears to have been caused by the underscored phrase above, the language would not seem to be applicable to a section 8 lease issued after October 1969. 30 CFR 225a.2(j)(2). Exhibit A to this contract sets forth clearly the point of delivery for leases OCS-G 1583, OCS-G 1986, and OCS-G 1987. 5/ Letter from the Oil and Gas Supervisor, GS, to counsel for appellant.

6/ Letter of July 9, 1973, from the Acting Oil and Gas Supervisor to OGFI.

The GS decision of September 12, 1979, discusses this letter briefly: "[T]he USGS did not by this letter designate a delivery point for royalty oil taken in kind. In fact, the letter did not relate to delivery points for royalty oil taken in kind. Accordingly, JFD's reliance on this letter is misplaced."

7/ Letter of October 2, 1973, from the Oil and Gas Supervisor, GS, to OGFI, inter alia, announcing the Secretary's authorization of the Supervisor to sell royalty oil to Southland Oil Company. Insofar as this letter invited OGFI to designate the point of delivery for leases OCS-G 1986 and OCS-G 1987, both of which were issued after October

Frequent mention is made of GS letters of December 28, 1977, and October 6, 1978, wherein GS approved transportation rates for the three aforementioned leases for the years 1975-77. Inasmuch as the United States took its royalty from these three leases in kind after August 20, 1976, these letters, by suggesting that transportation allowances would be approved for royalty oil taken from the above leases after that date, implicitly acknowledge that the point of delivery for these leases is not on or immediately adjacent to the leases. Although this is the case, the GS letter of December 28, 1977, arrived some 16 months after deliveries of royalty oil to Evangeline had begun. During this 16-month period, it would appear that GS never informed JFD, and JFD never inquired of GS, where the place of delivery for royalty oil was to be. The GS correspondence of December 28, 1977, and October 6, 1978, while contributing nothing to the clarification of this issue, can hardly be said to have caused JFD to take a particular course of action in reliance thereon. Indeed, it would appear that JFD would have taken identical action in transporting the royalty oil from the leases through the Grand Isle and South Timbalier Blocks and onshore to the Pass Fourchon Terminal even if it had been informed of the GS agreement with Evangeline designating the Grand Isle platform as the point of delivery.

Although JFD's argument based upon its reliance on GS communications is not persuasive, it offers a second argument on appeal which requires our remanding of this case to GS. JFD maintains that Evangeline paid to GS a price for royalty oil which included the cost of its transportation from Grand Isle Block 81 to the Pass Fourchon Terminal onshore. The gist of this argument is that GS received a price from Evangeline, part of which should be turned over to JFD for its labor in transporting royalty oil from Grand Isle Block 81 to South Timbalier Block 63.

In his decision of September 12, 1979, the Director, GS, has commented on this argument:

It should be noted that if the prices posted at the Pass Fourchon Terminal included the cost of delivery to that point, JFD would be correct in its assertion that under the regulations Evangeline is entitled to deduct an approved transportation allowance from the price at Pass Fourchon.

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fn. 7 (continued)

1969, the letter is not consistent with 30 CFR 225a.2(j)(1) and (2). OGFI responded by letter of March 11, 1974, designating Chevron's South Timbalier Block 63 "A" structure as the point of delivery. It should be noted that the above correspondence between GS and OGFI contemplated sales of royalty oil to Southland Oil Company more than 2 years prior to the sales to Evangeline.

By its contract with Evangeline, GS specified that Evangeline pay "market price" for the royalty oil involved. Market price was defined as follows: "[T]he highest price per barrel regularly posted or published, or generally paid or offered adjusted for delivery at the point of delivery, by any principal purchaser of crude oil of equal API gravity in the field where produced \* \* \*." See also 30 CFR 225a.2(j).

JFD argues that GS received the "full posted price" for its royalty oil taken in kind at Pass Fourchon Terminal. This price, it maintains, includes the cost of having such oil transported from Grand Isle Block 81 to South Timbalier Block 63. <sup>8/</sup> By Department of Energy (DOE) regulations, the prices charged by GS are subject to the regulations set forth in 10 CFR Part 212. 10 CFR 212.52. These regulations limit the price charged by a producer for a first sale of domestic crude oil. See, e.g., 10 CFR 212.73 and 10 CFR 212.74 establishing lower tier and upper tier ceiling prices. Counsel for appellant points to DOE Interpretation 1978 17 (April 21, 1978) which notes that the ceiling price for crude oil is established with reference to a historic price bulletin, which provides, either expressly or by implication, that price include certain customary services, such as delivery. Thus if the prices in the applicable bulletin (for May 15, 1973, or September 20, 1975) are delivered prices, the delivery services customarily provided by the producer on that date in connection with the sale of crude oil must continue to be provided to the purchaser if the producer wishes to charge the ceiling price applicable to that sale. Any reduction in such services must be accompanied by a corresponding reduction in the sales price. 43 FR 19827 (May 9, 1978).

If the facts alleged by appellant are true, GS received a price for its royalty oil which included the cost of its transportation. There is no question that JFD provided a service in moving the royalty oil from Grand Isle Block 81 to South Timbalier Block 63. On remand, GS is directed to determine the following:

1. The price it received from Evangeline for royalty oil taken by GS in kind on or after August 20, 1976, from leases OCS-G 1986 and OCS-G 1987.
2. Whether the price received by GS included the costs of transportation from Grand Isle Block 81 to South Timbalier Block 63.

If GS determines that it received a price which included the cost of transportation, it shall take the appropriate steps to refund

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<sup>8/</sup> By DOE regulation, 10 CFR 212.31, "posted price" is a written statement of crude oil prices circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field.

or otherwise credit to Evangeline that amount representing transportation charges. Notice of any proposed refund or credit shall be given to JFD, so that it may make a timely request of Evangeline to forward such moneys to it. If the price received by GS did not include transportation costs, JFD should look to Evangeline for reimbursement of its costs.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded to Geological Survey for action consistent herewith.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

